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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SUNSET HILLS CAR WASH, INC., Plaintiff and Respondent, v. GENERAL BARRICADE, LLC, Defendant and Appellant.	B291944 (Los Angeles County Super. Ct. No. BC709958)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary H. Strobel, Judge. Affirmed.

Alger Law, Timothy L. Alger; Greenberg, Gross, Alan A. Greenberg, Evan C. Burges, Sarah Kelly-Kilgore, Matthew S. Ingles; Freedman + Taitelman, Bryan J. Freedman and Steven E. Formaker, for Defendant and Appellant.

The Law Office of Herb Fox, Herb Fox; Law Offices of Richard M. Foster and David R. Euredjian for Plaintiff and Respondent.

I. INTRODUCTION

In April 2016, plaintiff Sunset Hills Car Wash, Inc. (Sunset) and defendant General Barricade, LLC (General)[1] entered into a 10-year licensing agreement (Agreement). That Agreement provided General would pay $9,000 a month to Sunset in return for access to the outside perimeter of Sunset's car wash on the Sunset Strip in Hollywood to erect a fence upon which General could place advertisements. To control potential visual clutter and blight, the Los Angeles Municipal Code imposes limitations on the advertisements one can display on such fencing. Looked at charitably, the Agreement sought to take aggressive but lawful advantage of the various advertising restrictions in the Municipal Code. One could also reasonably conclude, however, that one or both parties sought to profit from the display of advertisements prohibited by the Municipal Code.

In issuing a preliminary injunction prohibiting General from erecting a fence of any kind, and from placing any signage or advertisements on Sunset's premises pending a trial on the merits or further court order, the trial court concluded there was a reasonable likelihood the latter, more nefarious explanation would prevail. The trial court further concluded the balance of hardships tipped in favor of Sunset, which faced potential eviction by its landlord and potential fines and prosecution by Los Angeles City officials for its role in permitting the advertising at issue.

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[1] General Barricade, LLC has since changed its name to General Street Media, LLC.

General now appeals, arguing the trial court erred in issuing the preliminary injunction. We find the trial court did not abuse its discretion and affirm.

II. FACTUAL BACKGROUND

A. The Parties

Sunset has a 30-year lease to operate a car wash on west Sunset Boulevard in Hollywood (Premises). Its present lease began on August 1, 2012.

General is an outdoor advertising company. Its business includes obtaining leases from property owners that allow the erection of street-level fences on which advertising signs may be displayed.

B. The License Agreement

On April 20, 2016, the parties entered into the Agreement. Sunset licensed General space (Space) at the Premises "for [the] purpose of [General]'s installing and maintaining a perimeter fence with advertising signage thereon along with related items as necessary."[2] The Space was delineated in the Agreement as running along the perimeter of the Premises including "the airspace directly above the ground up to nine (9) feet high . . . ." The Space was to "be used exclusively by [General] for the

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[2] The parties' briefing vigorously contests whether the Agreement provides for a license (Sunset's position) or a sublease (General's position). That dispute was not presented to the trial court, nor is it germane to the resolution of this appeal. While we use the terms of the Agreement, including its license terminology, in addressing the parties' claims, we do not opine one way or the other whether the Agreement should be considered a license or sublease.

installation and ongoing operation of a high-quality, solid wood fence nine feet high, with attached advertisement signage and related items, such as permits, supports, lights, connections, etc. (hereinafter collectively referred to as 'Fence')."

The Agreement provides that "[General] shall have free access to its Space and Fence," that it would be "the sole owner of the Fence and the rights thereto," and that Sunset is prohibited from interfering with the Fence. It also provides that "[a]t [General's] expense, [Sunset] shall cooperate with and support [General]'s efforts to obtain and maintain permits and other approvals for [the] Fence, and for other permits . . . that might be necessary to obtain and maintain . . . the initial installation and/or ongoing operation of the Fence."

The Agreement's term is 10 years. General's rent for the first three years is $108,000 per year, to be paid in monthly installments of $9,000. After the third year, the rent increases three percent per year. The Agreement provides for early termination by General (but not Sunset) if certain situations arise.

Lastly, the Agreement contains integration and default cure provisions, stating the "License constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, [and] oral agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this License in any way. . . . Either party shall not be in default or breach of License unless it fails to cure any default or breach within fifteen (15) days following

receipt of written notice from the other party specifying the nature of the default or breach."

C. The City of Los Angeles Municipal Code

The City of Los Angeles Municipal Code contains numerous provisions regarding fences and associated advertising signage. Provided it contains no signage, a permit is not required for a wooden fence up to ten feet high. (Los Angeles Mun. Code, § 91.106.2, subd. 13.) However, no fence or other structure can be erected or maintained, or be used or designed to be used "for any use other than is permitted in the zone in which such . . . structure . . . is located and then only after applying for and securing all permits and licenses required by all laws and ordinance." (*Id*., § 12.21, subd. (A).)

Signs that are "tacked, pasted or otherwise temporarily affixed on . . . fences" are prohibited "except as permitted by Sections 14.4.16 and 14.4.17 of this Code." (Los Angeles Mun. Code, § 14.4.4, subd. (B)(5).) Section 14.4.16 requires a permit for any temporary sign "other than one that contains a political, ideological or other noncommercial message." (*Id*., § 14.4.16, subd. (A).) It also imposes restrictions on the amount of signage that may be displayed based on the quantity of related street frontage, as well as strict time limits. Those time limits require that signs "shall be removed within 30 days of installation and shall not be reinstalled for a period of 30 days of the date of removal of the previous sign" and that "[t]he installation of temporary signs shall not exceed a total of 90 days in any calendar year." (*Id*., § 14.4.16, subd. (C).)

Signs placed on temporary construction walls are subject to different rules and are "allowed to remain for as long as the

building permits associated with the construction site remain in effect or for a period of two years, whichever is less." (*Id.*, § 14.4.17, subd. (C).)

D. The Parties' Positions

A key disputed issue before the trial court was whether Sunset and General were engaged in a bona fide, permitted construction project that would allow General's signage under Los Angeles Municipal Code section 14.4.17, subd. (C).

1. Sunset's Evidence

Sunset's president Anton Akopian submitted a declaration stating General agreed to build an awning at the Premises in consideration for allowing General to place the Fence along the exterior of the Premises. Although the Agreement does not mention an awning or construction, Akopian asserted the parties agreed the Fence would be a "temporary construction wall," to be removed upon the completion of the construction of the awning. Anton provided an e-mail exchange where both he and a representative of General alternatively referred to the Fence as a "Temporary Construction Wall" and "Temporary Barricade." Despite Akopian's claim the Fence would be temporary, Akopian agreed to a 10-year term—far beyond the period presumably necessary to construct the awning.[3]

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[3] Akopian's only documented concern with the 10-year term was General getting a too favorable rent charge. In an e-mail from Sunset's attorney to General's representative, the attorney stated "[Akopian] is fine with the deal although somewhat uncomfortable with the long ten year term. [¶] . . . [¶] 10 years is a very long time, particularly with the same rent. [Akopian] would like to have some small escalations to protect against

Sunset also presented evidence that in May 2016, General's agent applied for a permit to construct an awning at the Premises, as well as for a permit to post temporary signs on a temporary construction wall. General constructed the Fence at Sunset and placed advertisements on it around the same time. In December 2016, General arranged for a contractor to begin building an awning at Sunset. This contractor installed a piece of the awning, but never returned to finish it. Akopian asserts he repeatedly told General the awning needed to be completed and General could not keep the Fence up if there was no construction being done. Akopian believed General was attempting to extend the construction project along with the ability to display advertisements on fencing purportedly associated with that construction.

Sunset presented certified reports from the City of Los Angeles, of which the court took judicial notice, confirming General applied for and received permits for the construction and the temporary construction wall. One such permit expired on November 30, 2016 and the other was closed on August 28, 2017. Sunset also provided evidence that General reapplied for a permit around the beginning of August 2017.

Akopian claims General's failure to maintain valid permits caused Sunset to receive multiple noncompliance citations from the City of Los Angeles. Sunset only presented evidence of one such citation—an Order to Comply dated December 4, 2017,

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inflation during this long period of time. He has suggested that there be a 3% escalation starting in year 3 and continuing in every year thereafter until expiration. I think that 3% is well within market and will probably maintain a reasonable level of value."

indicating that "[t]he temporary sign on the construction wall is in violation of . . . the [Los Angeles Municipal Code]" and citing violations of Code sections 14.4.17 and 12.21A.1(a).[4] Sunset thereafter received a Notice of Noncompliance of the Order, and an invoice demanding $660 for the noncompliance. Sunset eventually paid the fine after receiving a past due notice.[5] The Order to Comply and Notice of Fee contained a "Penalty Warning," indicating that "[a]ny person who violates or causes or permits another person to violate any provision of the Los Angeles Municipal Code . . . is guilty of a misdemeanor which is punishable by a fine of not more than $1000.00 and/or six (6) months imprisonment for each violation."

After receiving the Order to Comply in late 2017, Sunset hired its own contractor to complete the awning. Sunset's awning construction permit was closed on January 3, 2018.

2. General's Evidence

General's manager Alex Kouba submitted a declaration stating the Agreement provided only that General was to build and maintain a high-quality wooden fence at the Premises, which it did. General argues there was no contract between the parties for General to build an awning, as evidenced by the Agreement's integration clause stating there were no other verbal agreements

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[4] In an e-mail exchange between General and Sunset's representatives, there was a reference to another Order to Comply that was closed as of January 4, 2017 because of an extension of the construction permit for which General had previously applied.

[5] General asserts that it paid the fine, but provides no record citation that supports this claim.

that affected the License in any way. General also contests that the parties sought to portray the Fence as a temporary construction wall.

Despite Kouba's disavowal of any involvement in construction of an awning, individuals with General sent numerous texts and e-mails to Akopian to coordinate contractor visits to the Premises for construction of an awning. Kouba also admitted that General applied for permits to build a temporary construction wall and place signage on it pursuant to Municipal Code section 14.4.17, subd. (C), and those permits were granted. General further concedes the parties discussed additional or successive permits for construction projects on the Premises, presumably to take continued advantage of section 14.4.17, subd. (C) and its allowance of advertising signage on temporary construction walls.

Kouba stated General spent hundreds of thousands of dollars developing the media location at the Premises. General entered into contracts with its clients in reliance on the Agreement, including one with Spotify beginning in November 2017 and one with Ray Ban beginning in June 2018.

E. Sunset's Landlord

During negotiations preceding the Agreement, General asked Sunset if the Agreement needed to be approved by Sunset's landlord. Sunset's counsel told General no such consent was required because Sunset's lease did not require landlord consent for any signage.

On October 6, 2017, Sunset received a letter from a legal representative of its landlord informing Sunset it was in default under its lease. The landlord asserted the grounds for default

included that Sunset was not authorized to lease space to a third-party advertiser for commercial purposes, that Sunset was violating the lease's prohibition against subletting the Premises without the landlord's prior written consent, and that the signage on the Premises was not permitted in violation of several sections of the Los Angeles Municipal Code. The landlord notified Sunset that if the "Billboards" and the Fence were not removed by November 10, 2017, Sunset would be in breach of the lease and the landlord intended to commence eviction proceedings against Sunset, as well as pursue Sunset for all damages caused by its breach.

F. The Fence Gets Removed

On November 9, 2017—the day before its landlord's deadline—Sunset removed the Fence. On November 24, 2017, shortly before General needed the Fence to satisfy an advertising contract it entered with Spotify, General reinstalled the Fence and placed advertisements on it. Sunset called the police, who declined to intervene. Although Sunset did not present evidence its landlord renewed the eviction threat when General put the Fence back up, Sunset asserted its lease was still at risk of being terminated by its landlord if the Fence and related advertisements remained on the Premises.

As noted above, at some point in late 2017 Sunset hired its own contractor to complete the awning. The City of Los Angeles inspected the finished awning and closed the construction permit on January 3, 2018. On February 10, 2018, Akopian e-mailed General's counsel, informing him all construction had been completed and requesting that General remove the "barricades." Akopian told General that if the Fence was not removed within a

week, he would assume General wanted Sunset to tear it down. General replied that it did not consent to an early termination of the Agreement and demanded compensation for damages caused by the first time Sunset removed the fencing.

Despite this exchange, Sunset did not remove the Fence; instead, it remained on the Premises without any signage or advertisements from January 2018 through May 2018. In late May 2018, General placed on the Fence commercial advertisements for Ray Ban.

Shortly thereafter, on June 13, 2018, Sunset once again removed the Fence. It also installed a chain link fence and hired a private security company to prevent General from reinstalling the Fence.

III. PROCEDURAL BACKGROUND

On June 13, 2018, the same day Sunset removed the Fence from the Premises for the second time, it filed a verified complaint against General for breach of contract, declaratory and injunctive relief, trespass to property, intentional misrepresentation, and negligent misrepresentation. The breach of contract cause of action asserted General breached the Agreement by failing to complete the awning and failing to obtain and/or maintain necessary permits. The declaratory relief cause of action sought a declaration the Agreement was void for being illegal.

On June 15, 2018, Sunset filed an ex parte application for a temporary restraining order (TRO) and order to show cause based on the breach of contract and declaratory relief causes of action. The trial court (Judge Amy D. Hogue) granted Sunset's TRO enjoining General from (1) entering the car wash premises,

(2) erecting a temporary construction wall of any kind on the premises, and (3) placing any signage at the premises. The court made the TRO contingent on Sunset posting a bond in the amount of $153,575.00 to cover General's loss from the advertising contract with Ray Ban that it would not be able to carry out during the TRO. The court also set an order to show cause regarding a preliminary injunction for July 5, 2018.

On July 5, 2018, the court (Judge Mary H. Strobel) heard the order to show cause. The trial court found Sunset was reasonably likely to prevail on the merits of the breach of contract and declaratory relief claims. In particular, it found a reasonable likelihood Sunset could establish General breached the Agreement by failing to maintain active permits, and further "the Agreement appears to allow [General] to erect temporary walls at the Premises for 10 years, and because there is evidence that [General] will be unable to maintain the signage permits for 10 years in compliance with the municipal code, the Agreement may be illegal." The court further found the balance of hardships tipped in favor of Sunset because it had shown continued violations of the Municipal Code could lead to eviction proceedings and Sunset losing its lease, as well as fines and potential criminal prosecution, whereas General had not supported its assertions of damage to its business reputation or infringement of First Amendment rights.

Based on this analysis, the court granted Sunset's application for a preliminary injunction, and enjoined General and its agents from (1) entering the Premises; (2) erecting a temporary construction wall and/or barricade of any kind at the Premises; and (3) placing signage/advertisements at the Premises. The court also ordered Sunset to post an additional

bond in the amount of $50,000. General timely appealed, and we have jurisdiction pursuant to Code of Civil Procedure section 904.1, subdivision (a)(6).

IV. DISCUSSION

A. Standard of Review

"[A] preliminary injunction is an order that is sought by a plaintiff *prior to the full adjudication of the merits of its claim*," asking the court to restrain the defendant from "exercising his or her claimed right." (*White v. Davis* (2003) 30 Cal.4th 528, 554; *California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 302 (*California Correctional*).) "The purpose of such an order 'is to preserve the status quo until a final determination' " on the merits. (*Costa Mesa City Employees' Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305 (*Costa Mesa*).)

In deciding whether to grant a preliminary injunction, a trial court must analyze "two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunction relief." (*White v. Davis*, *supra*, 30 Cal.4th at p. 554.) "The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause." (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73.) "Thus, on appeal from an order granting a preliminary injunction, the question generally is whether both irreparable harm and the likelihood of prevailing on the merits are established." (*California Correctional*, *supra*, 82 Cal.App.4th at p. 302.)

We review the issuance of a preliminary injunction for abuse of discretion. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678.) "However, '[t]o the extent that the trial court's assessment of likelihood of success on the merits depends on legal rather than factual questions, [such as when the meaning of a contract or a statute are at issue,] our review is de novo.' " (*Costa Mesa*, *supra*, 209 Cal.App.4th at p. 306.)

" 'In determining the validity of the injunction, we look at the evidence presented at the trial court to determine if there was substantial support for the trial court's determination that the plaintiff was entitled to the relief granted.' [Citation.] 'Where the evidence before the trial court was in conflict, we do not reweigh it or determine the credibility of witnesses on appeal. "[T]he trial court is the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts." [Citation.] Our task is to ensure that the trial court's factual determinations, whether express or implied, are supported by substantial evidence. [Citation.] Thus, we interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court's order. [Citations.]' " (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1300.)

B. The Trial Court Did Not Abuse its Discretion in Finding Sunset Had a Reasonable Likelihood of Success on the Merits

General contends the trial court erred in determining Sunset had a reasonable likelihood of prevailing on the merits of its breach of contract and declaratory relief causes of action.

Interpreting, as we must, the facts in the light most favorable to Sunset and indulging in all reasonable inferences in support of the trial court's order, we find the trial court acted within its discretion in concluding Sunset had the requisite probability of success on both causes of action.

1. Breach of Contract Claim

Sunset alleges that General breached the Agreement by failing to obtain and maintain the required permits and by failing to construct the awning. Sunset presented evidence it has been fined and threatened with criminal prosecution and eviction due to the lack of required permits. Because we find the trial court's decision regarding General's failure to maintain the required permits sufficient to demonstrate a likelihood of success on the merits of the breach of contract claim, we do not address whether the alleged failure to construct the awning constituted a separate breach.

(a) General's Alleged Lack of Obligation to Secure Permits

General first argues the Agreement did not obligate it to obtain permits, so General could not have breached the Agreement by failing to obtain such permits. The Agreement does state, however, that Sunset must cooperate and support General's efforts to obtain and maintain permits. "Generally, all applicable laws in existence when an agreement is made necessarily enter into the contract and form a part of it, without any stipulation to that effect, as fully as if they were expressly referred to and incorporated in its terms. [Citation.] This principle embraces local ordinances as well as state statutes." (*Grubb v. Ranger Ins. Co.* (1978) 77 Cal.App.3d 526, 529.)

General set up the Fence and displayed commercial advertisements on it and was therefore obligated under the Municipal Code (which was incorporated into the Agreement) to obtain the required permits. Indeed, General conceded below that it was responsible for obtaining any permits that may be required for the Fence and related signage.

General also argues it was not obligated to obtain permits because it could build a nine-foot wooden fence on the Premises without a permit. (See Los Angeles Mun. Code, § 91.106.2, subd. 13.) That would be the case, however, only if the fence did not display advertising. General did not just set up a nine-foot fence. It set up a nine-foot fence pursuant to an Agreement to "install[ ] and maintain[ ] a perimeter fence with advertising signage thereon . . . ." General thereafter applied for a permit to place signs on a temporary construction fence, and then sold and placed advertisements on that same fence. Moreover, it ignores economic reality to suggest General was paying over $100,000 a year for the ability to build a fence at its own expense on someone else's business and nothing more. The Agreement provided for signage because General expected to charge its corporate clients wanting to advertise on the Sunset Strip more than the monthly rent General was paying Sunset. Given the facts here, General's argument that nine-foot fences without any associated advertising do not require permits is irrelevant.

General finally suggests it did not need to obtain permits because certain signs do not require permits—namely, political, ideological or other noncommercial messages. (See Los Angeles Mun. Code, § 14.4.16, subd. (A).) General does not argue that its advertisements for Spotify or Ray Ban were political, ideological, or otherwise noncommercial. Indeed, General admitted it

"entered into various contracts with its corporate advertising clients to post advertising" on the Fence. Nor does General point to any potential political, ideological, or other noncommercial advertisements it intended to post. As the trial court observed, General's "own evidence suggests the signage is commercial in nature." Accordingly, that General did not need a permit for an activity in which it was not engaged is entirely beside the point.

(b) General's Alleged Securing of Required Permits

General alternatively asserts that if it was required to obtain permits, it was not in breach of the Agreement because it in fact obtained such permits. Initially, General argued to the trial court that the permits it obtained were still valid at the time of the trial court proceedings in June and July 2018, because they were valid for two years from the date they were issued in August 2016. There was substantial evidence before the trial court, however, that the permits General secured either expired or were closed as of August 2017. There was also substantial evidence that General placed unpermitted advertising on the Fence after the permits expired or were closed, and that the City of Los Angeles cited Sunset in December 2017 for having the Fence and advertisements up without a valid permit.

(c) General's Alleged Lack of Notice and Opportunity to Cure

General finally argues that it could not have breached the contract because it was never given written notice from Sunset that it was in default or breach of the Agreement, along with an opportunity to cure, as required by the Agreement. This argument was not raised before the trial court, and therefore is

forfeited for purposes of this appeal. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 670.)

2. Declaratory Relief Claim

The trial court additionally found a likelihood of success on the claim for declaratory relief that the Agreement was illegal. In the court's view, "[b]ecause the Agreement appears to allow [General] to erect temporary walls at the Premises for 10 years, and because there is evidence that [General] will be unable to maintain the signage permits for 10 years in compliance with the municipal code, the Agreement may be illegal."

General urges us to apply the maxim that a contract must be construed to be legal if at all possible. (E.g., Civ. Code, § 1643; *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal.App.4th 531, 548 (*Kashani*).) General argues the Agreement was not for an illegal purpose because it "is simply to sublease land for a fence in exchange for rent—a very standard commercial lease." General claims it was not required to place advertisements on the Fence, and it could potentially use the Fence in various lawful manners, and therefore one cannot reasonably consider it likely the Agreement can be construed as having an illegal object.

"[E]ven though a contract is legal on its face, evidence may be introduced to establish its illegal character." (*Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1112; see also Code Civ. Proc., § 1856, subd. (g) [parol evidence rule does not exclude evidence offered to establish illegality].) Based on the evidence before it, the trial court did not abuse its discretion in holding there was a reasonable likelihood a fact finder would conclude the Agreement was for an illegal purpose. Indulging in all

reasonable inferences in support of the trial court's order, there was substantial evidence to suggest Sunset and General intended to profit by General placing the Fence on the Premises for 10 years for the purpose of displaying advertisements, and engaging in seriatim purported "construction" projects to falsely suggest the barrier was only a temporary construction fence subject to section 14.4.17, subd. (C) of the Municipal Code rather than a more permanent fence displaying advertising subject to different and more onerous requirements in section 14.4.16, including separate permitting, size restrictions, and time limitations on display.

We also note the general principle that a contract is not void if it can be performed in a legal manner " 'does not apply where the one seeking to enforce the contract participates in the illegal performance.' " (*Kashani*, *supra*, 118 Cal.App.4th at p. 552.) In *Kashani*, the parties contracted to do business in Iran, which was legally prohibited. One party argued their agreement should be construed as legal because they could have applied for a license to do business in Iran that, if granted, would have made their conduct legal. The *Kashani* court rejected that claim, and found the agreement violated the law because the party claiming legality had the "burden to show not only that the transaction is licensed but that any license obtained after the transaction was effected cured the illegal activity that has occurred." (*Id*. at p. 552.) Here, General similarly argues it could have applied for a permit that would have made its conduct legal. But instead of doing so, it continued posting advertisements when the permits for which it had previously applied expired or were closed. Nor does General point to any regulation whereby a later permit

(which General did not in fact obtain) would have cured prior illegal activity.

C. The Trial Court Did Not Abuse its Discretion in Weighing the Balance of Harm to the Parties

When balancing the relative harm to the parties in determining whether to issue a preliminary injunction, courts must consider " 'the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo.' " (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) As a threshold matter, the party seeking a preliminary injunction must present evidence it would suffer some irreparable harm "if an injunction is not issued pending an adjudication of the merits." (*White v. Davis*, *supra*, 30 Cal.4th at p. 554.) A showing of irreparable harm means "a factual showing that the wrongful act constitutes an actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award." (*Brownfield v. Daniel Freeman Marina Hosp.* (1989) 208 Cal.App.3d 405, 410.)

"While the mere possibility of harm to the plaintiffs is insufficient to justify a preliminary injunction, . . . plaintiffs are 'not required to wait until they have suffered *actual harm* before they apply for an injunction, but may seek relief against the *threatened infringements* of their rights.' " (*Costa Mesa*, *supra*, 209 Cal.App.4th at p. 305.)

1. Harm to Sunset if the Preliminary Injunction Was Denied

Sunset presented substantial evidence that its landlord threatened to evict it and that it was threatened with fines and criminal prosecution, and the trial court accordingly did not

abuse its discretion in finding that Sunset had shown the threat of irreparable harm. Real property is generally presumed to be unique, such that its loss cannot adequately compensated by damages. (See Civ. Code, § 3387.) The trial court found that Sunset faced potential irreparable harm because if the preliminary injunction was denied, Sunset faced the risk of being prematurely evicted from its 30-year lease.

General argues this finding of eviction risk was not supported by substantial evidence because Sunset failed to produce its lease or other additional corroborating evidence, and Sunset told General that Sunset had the authority to enter the Agreement without the landlord's permission (thus suggesting the landlord's eviction threat was baseless). We disagree. When reviewing for substantial evidence we focus on the whole record rather than on " ' "isolated bits of evidence." ' " (*People v. Cuevas* (1995) 12 Cal.4th 252, 260.) Nor do we reweigh the evidence. (*Alliant Ins. Services, Inc. v. Gaddy*, *supra*, 159 Cal.App.4th at p. 1300.) Sunset presented a letter from its landlord's counsel threatening to begin eviction proceedings if Sunset did not remove the Fence. The claimed violations of the lease included the lack of permits for the Fence and the associated violations of the Los Angeles Municipal Code. Under the Municipal Code, the landlord could potentially be held liable for continuing violations on the Premises (Los Angeles Mun. Code, §§ 11.2.02–11.2.03), thus explaining its threat of eviction if the Fence was not removed.

General's argument further fails to acknowledge that the possibility of eviction threatened not only Sunset, but also General. If Sunset was no longer in possession of the Premises,

General would have no right of access or ability to use the Premises under the Agreement for fence-related advertisements.

Substantial evidence also supports the court's finding Sunset faced irreparable harm from potential fines and criminal prosecution. Sunset received an Order to Comply and Notice of Fee from the City of Los Angeles for having signage on a temporary construction wall in violation of the Municipal Code. Besides imposing a fee, the City warned Sunset that "[a]ny person who violates or causes or permits another person to violate any provision of the Los Angeles Municipal Code . . . is guilty of a misdemeanor which is punishable by a fine . . . and/or six (6) months imprisonment for each violation." General has provided no evidence it has reapplied for permits or that new permits have been issued. Thus, if the preliminary injunction was denied and General was to put the Fence and signage back up, there is no reason to believe the City would not issue another Order to Comply and Notice of Fee, and that Sunset would not once again face potential criminal liability.

2. Harm to General if the Preliminary Injunction Was Granted

General asserts that granting a preliminary injunction harmed it because General has been, and will continue to be, deprived of its right under the Agreement to conduct business at the Premises, its reputation will suffer as a result of not being able to do business at the Premises, it will not be able to meet its obligations to third parties under existing contracts, and its rights of expression and speech have been and will continue to be muted by its inability to place signage on the Fence.

As far as General's existing contracts, it offered evidence only of an agreement with Ray Ban that it was unable to execute because of the preliminary injunction. The court ordered Sunset to post a bond in the amount of its expected income from that contract to ensure that if General does succeed at trial, it can be compensated for the money it lost. To the extent other contracts may exist, there is no reason to believe a fact finder will not be able to calculate what General's damages would be as to those other contracts.[6]

While General is being denied access to unique land, the magnitude of its lack of access must be weighed again similar issues facing Sunset. General cannot use a small strip around the perimeter of the Premises until a full hearing on the merits or other order of court, which pales in comparison to the 24 years of remaining lease for its entire business location that Sunset was at risk of losing if the preliminary injunction was not granted. Furthermore, unlike Sunset, General did not present any evidence it had been threatened with criminal prosecution or fines because of its failure to obtain and maintain required permits.

Lastly, as explained above, General was not displaying political, ideological, or other noncommercial messages on the Fence, nor did it present any evidence it contemplated doing so. General was displaying commercial advertisements without valid

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[6] General also claims harm to its business reputation, which the trial court noted would be difficult to remedy with damages. That being said, General did not present evidence to support its assertion that its business reputation is being damaged by its inability to place a Fence at the Premises until a full hearing on the merits is held.

permits, so enjoining General from posting further advertisements pending a trial on the merits does not irreparably harm General's First Amendment rights. (Cf. *Lamar Central Outdoor, LLC v. City of Los Angeles* (2016) 245 Cal.App.4th 610 [Los Angeles City ordinance banning outdoor commercial advertisements, similar to the ones at issue here, was not constitutionally infirm under either the First Amendment or the free speech clause of the California Constitution].)

3. Preservation of the Status Quo

General lastly asserts the preliminary injunction should be overturned to sanction Sunset's "self-help" in taking down the Fence before requesting an injunction. The status quo is defined as " ' " 'the last actual peaceable, uncontested status which preceded the pending controversy.' " ' " (*14859 Moorpark Homeowner's Assn. v. VRT Corp.*, *supra*, 63 Cal.App.4th at p. 1408.) General contends that prior to Sunset's self-help, the Fence was standing and that was the status quo the trial court should have enforced.

The simple fact is that there was no peaceable, uncontested status one way or the other before Sunset removed the Fence. Sunset demanded General remove the Fence when the awning was completed; General contested any such removal. Faced with a notice from its landlord that eviction proceedings would commence unless the Fence was taken down, as well as a violation notice from the City, Sunset took down the fence. General then came onto the Premises and rebuilt it. Sunset called the police, who indicated General coming onto the Premises to rebuild the Fence was a civil matter outside their bailiwick. When General put advertisements back on the fence

and subjected Sunset to further potential fines, Sunset took down the Fence a second time. In short, it is unclear when, if ever, the situation at the Premises between Sunset and General was last peaceable and uncontested.

Because General has provided no evidence it reapplied or obtained new permits for advertisements, and there is a reasonable likelihood continued use of the Fence to post advertisements would be illegal, the trial court did not abuse its discretion in balancing the relative harm to the parties and preserving the status quo by keeping the Fence and advertisements down pending a full hearing on the merits or further order of the court.

4. The Preliminary Injunction is Not Impermissibly Overbroad

At oral argument, General additionally suggested the preliminary injunction was overbroad, and should be more narrowly tailored if it is not dissolved entirely. This argument was not raised in General's briefing, and "[w]e do not consider arguments that are raised for the first time at oral argument." (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1554, fn. 9.)

Even if we did consider this assertion, we would reject it. " 'The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or that he should not be restrained from exercising the right claimed by him.' [Citations.]" (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528

(*Continental Baking*).) In *Continental Baking*, the parties had competing claims regarding one party's alleged right to build on a portion of real estate, and the enjoined party made a similar argument that the preliminary injunction was overbroad because it proscribed otherwise permitted activity on the real property. The Supreme Court held "[t]he order of the trial court in this case was clearly intended to preserve the status quo pending a trial on the merits" and that [w]hen viewed in this light the injunction is [not] . . . overbroad." (*Id.* at p. 534.)

V. DISPOSITION

The order issuing the preliminary injunction is affirmed. Sunset is to recover its costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.